April 19, 2005

Noteworthy

"Clearly, if a single Senator had wanted to filibuster the Thomas nomination, he would not be on the Supreme Court now, because we would probably not had 60 votes to invoke cloture. So it is not in dispute that this has never been done before for the purpose of killing a nomination. There have been occasional cloture votes, always for the purpose of advancing a nomination to conclusion. This innovation is what's new. And this innovation is what needs to be stopped."

-Senator Mitch McConnell, 4/19/05

Full Transcript of Senator McConnell's press availability

Releases:

Statement of Senator Bill Frist on Legislative Filibuster

Senator Cornyn: Shutting Down the Senate is not 'Common Sense'

Events:

4/20/05: Republican Freshmen Senators to Hold Press Conference to Discuss Judicial Nominees; 11 am; Senate Swamp

Myth vs. Fact

Myth: Senate Republicans are attempting to abolish legislative filibusters.

Fact: Republicans are seeking to restore the advice and consent Constitutional obligations of the Senate for judicial nominees – not eliminate the legislative filibuster – even though Democrats have supported abolishing all forms of filibusters in the past.

In 1995, Democrats (Bingaman, Boxer, Feingold, Harkin, Kennedy, Kerry, Lautenberg, Lieberman, And Sarbanes) wanted to end the legislative filibuster. In 1995, the only Senators on record supporting the end of the legislative filibuster were all Democrats, nine of whom are still serving in the Senate. (Karen Hosler, "Senators Vote 76-19 To Maintain Filibuster," *The* [Baltimore] *Sun*, 1/6/95; S.Res. 14, CQ Vote #1: Motion Agreed To 76-19: R 53-0; D 23-19, 1/5/95, Bingaman, Boxer, Feingold, Harkin, Kennedy, Kerry, Lautenberg, Lieberman, and Sarbanes Voted Nay)

- The Harkin-Lieberman proposal would have amended the Senate rules to allow a simple majority to overcome "any" filibuster, legislative or executive. (Karen Hosler, "Senators Vote 76-19 To Maintain Filibuster," *The* [Baltimore] *Sun*, 1/6/95; S. Amdt. 1, Motion To Table Agreed To, 1/5/95)

Sen. Bill Frist (R-TN) is attempting to restore Senate traditions and end filibusters of judicial nominations only, as evidenced by the Frist-Miller Proposal. On May 9, 2003, Senators Frist (R-TN) and Miller (D-GA) introduced Senate Resolution 138. S. Res. 138 proposed to amend that Senate Rules so that majority-supported judicial nominations would eventually receive a floor vote, but the proposal only applied to the consideration of judicial and executive nominations. (S. Res. 138, Introduced 5/9/03)

- In fact, Senator Frist's first Senate vote in 1995 was to preserve the legislative filibuster. (S.Res. 14, CQ Vote #1: Motion Agreed To 76-19: R 53-0; D 23-19, 1/5/95, Frist Voted Yea)

SENATOR McCONNELL HOLDS A MEDIA AVAILABILITY

APRIL 19, 2005

MCCONNELL: Good afternoon, everyone.

As you know, I sent a letter to Senator Reid yesterday, which he's just responded to, on the whole issue of the Democratic threat to shut down the Senate, and, therefore, the government.

That is a threat that really should not be carried out. We have important business to do here, and we are anxious to move forward with it. And I think any such reprisals would not be in the best interest certainly of the Senate or of the people of this country.

With regard to the agenda, the majority leader's indicated what we'll be going to in the near future. We would hope that any threats to stop any of these important pieces of legislation for the country would not be carried out in some fit of pique because the majority was simply trying to return to the tradition that prevailed around here for 214 years, which is that the president's nominees to the judiciary are entitled to an up-or-down vote. And that tradition was altered in the last Congress.

And as you know, we're under serious discussions about getting back to the way that business has been done here in the Senate for the first couple of hundred years, which seemed to have served us quite well.

I want to make one other observation. It's been suggested by the other side that somehow this is a slippery slope that leads to the elimination of the legislative filibuster.

This whole discussion I find somewhat amusing because when I was a young man the filibuster was a pejorative term, it was thought of as something that was used to do bad things, like stop civil rights legislation.

Now you would think, listening to the other side, the filibuster is in the Constitution, which of course it is not. I have read the Constitution carefully and there's nothing in here about the filibuster.

But to the extent that anybody has in recent years talked about getting rid of the legislative filibuster, it is the Democrats, not the Republicans.

In fact, in 1995, the first year after the new Republican majority came in, there was a vote in the Senate, in fact I believe it was the first vote Senator Frist cast when he got here, every single Republican voted against getting rid of the legislative filibuster, and there were 19 Democrats who voted in favor of getting rid of the legislative filibuster, nine of whom are still here.

MCCONNELL: So there is no one that I know of in the current Senate, on our side of the aisle, certainly, who is in favor of getting rid of the legislative filibuster.

And you might want to ask the nine Democrats who are still here in the Senate, who voted to get rid of the legislative filibuster in 1995, if they still fill that way.

With that, let me (inaudible)

QUESTION: Do you see any room for compromise on (inaudible)

MCCONNELL: Well, Senator Frist has had numerous discussions with Senator Reid. And I have as well, separately, over the last few months, since he assumed his new position, in the hope that we could somehow get back to the way the Senate operated, everybody feels quite nicely, for 200 years.

At the risk of being redundant, you all have heard this a lot of times, but Bork didn't even have a majority in the Judiciary Committee. And yet it never occurred to anybody that he was not entitled to get out of the Judiciary Committee, even though he didn't have a majority, and to get an up-or-down vote on the Senate which he got.

I think the Clarence Thomas vote in committee was dead even. So he could have been killed in committee. It never occurred to anybody that Justice Thomas was not entitled to an up-or-down vote on the Senate floor. He only got 52 votes.

Clearly, if a single Senator had wanted to filibuster the Thomas nomination, he would not be on the Supreme Court now, because we would probably not had 60 votes to invoke cloture.

So it is not in dispute that this has never been done before for the purpose of killing a nomination. There have been occasional cloture votes, always for the purpose of advancing a nomination to conclusion. This innovation is what's new. And this innovation is what needs to be stopped.

Finally, let me say, I think this is incredibly short-sighted. Against the best efforts of people like me, the Democrats may have a president, three years from now. And where this leads ultimately is to establishing the principle that 41 members of the Senate can dictate to the president who ought to be on the circuit courts and who ought to be on the Supreme Court. I don't think that's where they want to end up, but that's where this is headed if their position were to prevail.

QUESTION: Senator, some people have suggested that you (inaudible) that there's anything even close to a meeting of the minds between the two parties. Is that fair to say?

MCCONNELL: I don't think we are close to a meeting of the minds, no. I think the other side has dug in. The leader's made it very clear, publicly. And since he said it publicly, I wouldn't be in violation of any confidence to say he said same thing privately, that there's no deal, at least any that we've heard so far.

QUESTION: Senator, the Democrats are now -- the Democratic leader was just out here (inaudible) the possibility that his party might filibuster John Bolton, another area for filibusters. What's your response to that?

MCCONNELL: Certainly they would have that opportunity. Apparently, the way we're operating these days, that would certainly be an opportunity.

I would hope they wouldn't do that, as the president and the secretary of state both feel that Mr. Bolton is the appropriate choice for that particular job. If they don't like him, they can vote against him. But I think filibustering him is not a good idea.

QUESTION: Do you see any attempt to change the rules on filibustering of nonjudicial nominees?

MCCONNELL: No, I've not heard any discussion of that at all. As a matter of fact let me reiterate that this is a narrow discussion about filibustering judicial nominations for the purpose of defeating them, not delaying them for a period of time, but defeating them.

That is all this is about. It is not about the legislative filibuster. It is not about executive branch filibusters. This is about judicial filibusters.

QUESTION: Senator Biden has made a comment that in the past that there was some consultation about the judicial nominees, but there is no consultation with the minority party when they submit the nominees.

Is it possible that that consultation could resume and then maybe some of the heat of this argument would dissipate?

MCCONNELL: Well, you know, consultation is in the eye of the beholder.

It's pretty clear under the Constitution that the president of the United States has the right to nominate people to the courts and to the executive branch. And consultation is a murky term. I don't know how much consultation would be required.

Let me tell you what they really want to do. It's perfectly clear. They want 41 senators to be able to dictate to the president of the United States, whoever that may be, who will be chosen for the courts. Let me repeat: That is very shortsighted. They may have a president themselves a few years from now.

There's no chance that this kind of precedent, once established, would be forgotten. So we need to undo this unfortunate new trend that developed in the last Congress and get back to the way we've operated for the first couple of hundred years.

Statement from Majority Leader Bill Frist

WASHINGTON, DC- Majority Leader Bill Frist, R-TN, today released the following statement:

"As more and more attention has focused in recent weeks on a partisan minority unfairly blocking simple up or down votes on judicial nominees in the Senate, some have claimed that any effort to restore precedent for up or down votes on judicial nominees would affect the rights of Senators when it comes to legislation.

"If I must act to bring fairness back to the judicial nomination process, I will not act in any way to impact the rights of colleagues when it comes to legislation. Senate rules and practices now provide many tools for members, and leaders, to see legislative ideas brought to an up or down vote on the Senate floor and there is no need for change in relation to legislative matters.

"It is unfortunate that Democrats continue to block up or down votes on President Bush's judicial nominees, thereby keeping the Senate from doing its constitutional duty. I urge the minority to put aside its partisan blockade, which interferes with our constitutional responsibilities, and join with me to bring fairness back to the process of voting for or against judicial nominees."

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Release from Senator Cornyn:

SHUTTING DOWN THE SENATE IS NOT 'COMMON SENSE'

Nominees deserve up-or-down vote, not a minority threatening to shut down the government if they don't get their way, Cornyn says

WASHINGTON--*U.S. Sen. John Cornyn, a member of the Senate Judiciary Committee, made the following statement Tuesday regarding the Minority Leader and "common sense" in judicial nominations:*

"Sen. Reid today will reportedly join with a so-called 'common sense Republican' from a liberal special interest group's TV ad to support the permanent filibuster against the President's well-qualified judicial nominees. So it's appropriate to point out that common sense means judging nominees on the basis of their qualifications, not harsh vicious personal attacks; common sense means keeping the rules the same regardless of which party is in the White House or the Senate majority; and common sense means holding up-or-down votes on judicial nominees, and then getting back to the rest of the people's business -- not extreme tactics like shutting down the government.

"The truth is, the rule for judicial confirmations for the 200 years since our nation's founding has always been majority vote. The Senate should hold a simple up-or-down vote on the President's nominees. The last thing we should allow is for a partisan minority of the Senate to shut down the government just because a majority of Senators exercises its constitutional authority to confirm fair judges through a fair process."

Sen. Cornyn chairs the Judiciary Committee's Immigration Subcommittee. He served previously as chairman of the Constitution Subcommittee. He's a former Texas Attorney General, Texas Supreme Court Justice, and Bexar County District Judge.

MEDIA ADVISORY

Republican Freshmen Senators to Hold Press Conference

To Discuss Judicial Nominees

Who: Senators Richard Burr, Tom Coburn, Jim DeMint, Johnny Isakson, John Thune and David Vitter

When: Wednesday, April 20, 2005 at 11:00 AM

Where: Senate Swamp